IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5595 OF 2007

Shri Sidheshwar Sahakari Sakhar
Karkhana Limited, Kumathe ..Petitioner

Vs.

Shankar Sidhanna Jamadar ..Respondent

Smt. Meena H. Doshi for petitioner.
Mr. P.P. Killedar for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : November 26, 2007.

P.C.:

1. Heard Mrs. Doshi the learned counsel for the petitioner - Co-operative Sugar Factory.

2. Rule. Mr. Killedar waives service for the respondent. By consent of the parties, petition is taken up for final hearing forthwith as the issue involved revolves around,

(a) the eligibility of the respondent claiming

permanency in employment, and

(b) whether the same ought to have been examined on the basis of the amended Model Standing Orders as applicable to the Co-operative Sugar Factories in the State of Maharashtra, though both the parties before the Industrial Court proceeded on the basis that there was no such amendment in the Model Standing Orders, over and above it was published in the Gazette dated 9/7/1949 under Section 35(5) of the Bombay Industrial Relations At, 1946 (BIR Act).

3. The respondent had approached the Industrial Court at Solapur by filing Complaint (ULP) No. 179 of 1997 under Section 28 read with Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short PULP Act). It was contended by him that he was working as a Centrifugal Operator in the petitioner-factory for the seaon of years 1972-73

onwards and having completed more than three seasons he had attained the status of a permanent operator as defined under Clause No.3(2)(a) of the 1949 Model Standing Orders. The complaint was opposed by the petitioner - employer. It was contended by the employer that though the complainant came to be engaged as a seasonal operator on 1/3/1973, he had remained absent in the season for 1976-77 and, therefore, the said season was required to be excluded. The learned Member of the Industrial Court considered the evidence both oral as well as documentary as adduced by both the parties and recorded a finding that,

(a) the complainant had joined on 1/3/1973 and he worked in the sugar season of 1972-73 (Exh.C-14);

(b) the sugar factory did not crush sugarcane in the season of 1973-74;

(c) in the subsequent two sugar seasons i.e. 1974-75 and 1975-76 the complainant had

worked with the sugar factory and, therefore, had become a deemed permanent seasonable operator at the end of 1975-76 sugar season itself.

4. On the other hand, the employer contended that the eligibility of the complainant was required to be considered from the sugar season of 1974-75 onwards and if so considered, in the last sugar season i.e. 1976-77 the complainant had remained absent and, therefore, the requirement of three consecutive seasons as envisaged under the Model Standing Orders referred to hereinabove could not be completed and, therefore, the complaint was required to be dismissed. This last contention has been turned down by the learned Member of the Industrial Court for more than one reasons, namely, that the complainant did not remain absent but, in fact, the sugar factory had removed him from service as he had remained absent. The cause of absence was the death of his brother and subsequently due to his own mental condition due to the death of his brother and, therefore, the fresh appointment with effect from 5/12/1977 though made by

the sugar factor was a punitive order. However, even if the last season of 1976-77 is excluded, as per the learned Member of the Industrial Court, three earlier consecutive seasons supported the case of the complainant i.e. the crushing season of 1972-73, 19775 and 1975-76 (in the sugar season of 1973-74 there was no crushing). As per Mrs. Doshi even this finding is erroneous in the eyes of law and, in fact, it was not pointed out before the Industrial Court by either of the parties that the 1949 Model Standing Orders were substantially amended by 1989 Standing Orders published in the Gazette dated 13/4/1989, amended as per the GR dated 7/1/1989. Mrs. Doshi further submitted that even if the petitoner-employer had failed to point out to the Industrial Court that the Model Standing Orders were amended in the year 1989 and the complaint was required to be considered on the basis of the said amended Standing Orders, when it comes to the issue of unfair labour practices, which result in penal consequences and the eligibility of the complainant for being made a permanent employee (12 monthly permanent and not a permanent seasonal operator), it is necessary for this court to ensure

that the said eligibility of the complainant is decided on the basis of the amended Model Standing Orders and this will avoid miscarriage of justice to both the parties and there will not be any scope for any other employee or the representative - Union to raise a grievance on the basis of the impugned decision which is based on the unamended Model Standing Orders.

5. Clause 3 (2)(a) of 1949 Model Standing Orders define the term "permanent operative" as under:-

> "Permanent operative" means an operative who has been appointed as such in writing by the Manager, and includes a permanent seasonal operative.

Whereas in the 1989 Model Standing Orders (amended), the said Clause regarding "Permanent operative" means an operative who has been employed on a permanent basis or who, having been employed as a Badli or a temporary operative has subsequently been made permanent by and order in writing by the Manager or

any person authorised by him in that behalf and includes an apprentice who is asked or appointed to work in the post or vacancy of a permanent operative on payment of wages to him, during the period he works on such post or vacancy.

. The amendment carried in the Model Standing Orders of 1989 and as noted hereinabove makes two main changes, namely, (a) the explanation has been deleted and (b) eligibility criteria for permanent employee of three consecutive seasons has been done away and instead the requirement is employment on a permanent basis or having been employed as a Badli or a temporary operative who has subsequently been made permanent by an order in writing by the Manager or any person authorised by him in that behalf and also includes an apprentice who is asked or appointed to work in the post or vacancy of the permanent operative. It is also relevant to note that an additional clause regarding confirmation of Badli or temporary operative, namely, Clause 4C has been added in 1989 Model Standing Orders and the same reads as under:-

"4C. Confirmation of badli or temporary operatives.- A badli or temporary operative who has put in 190 days uninterrupted service in the aggregate in any undertaking of seasonal nature or 240 days uninterrupted service in the aggregate in any other undertaking during a period of preceding twelve calendar months, shall be made permanent. In that undertaking by an order in writing signed by the Manager or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the undertaking throughout the period of the said twelve calendar months.

Explanation- for purposes of this clause any period of interrupted service, cause by cessation of work which is not due to any fault of the operative concerned, shall not be counted for the purpose of computing 190 days or 249 days or as the case may be for making a badli or temporary operative permanent."

6. Mrs. Doshi, therefore, is right in her submissions that (a) the grievance of the permanent employee is required to be readdressed on the basis of 1989 Model Standing Orders as amended and this ought to be done by remanding the complaint for a de novo trial. Obviously, both the parties will be at liberty to amend their respective pleadings and adduce additional evidence, if so desired. However, keeping in mind that the demand was raised in the complaint filed in the year 1997, on remand, it will be decided expeditiously and within a fixed period and in the meanwhile the impugned order will have to be quashed and set aside.

7. Hence, the petition is partly allowed and the impugned order passed by the Industrial Court at Solapur in Complaint (ULP) No. 179 of 1997 is hereby quashed and set aside. The said complaint is restored to the file of the Industrial Court at Solapur and it is directed that it shall be decided on the basis of 1989 Model Standing Orders as applicable to the Co-operative Sugar Factories covered by the BIR Act,

including Clause 4C therein. The parties are at liberty to amend their pleadings and adduce additional evidence, if so desired. On remand the complaint shall be heard and decided on its own merits as expeditiously as possible and in any case before 30/4/2008. The parties to appear before the Industrial Court at Solapur on 3/12/2007. Both the parties have furnished a solemn undertaking before this court that they will cooperate with the learned Member to decide the complaint, on remand, within the stipulated period in this order.

8. Rule is made absolute accordingly with no order as to costs.

(B.H. Marlapalle,J.)